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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

13 **ELIZABETH MARIE SWENSON,**  
14 **AKA, ELIZABETH MARIE SERRANO**

15 Respondent.

Case No.

**2013-131**

**STATEMENT OF ISSUES**

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about August 25, 2011, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for a Registered Nurse License from Elizabeth Marie  
24 Swenson, aka Elizabeth Marie Serrano (Respondent). On or about August 17, 2011, Respondent  
25 certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on February 15, 2012.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

....

(2) Conviction of a crime.

....

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

....

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

1 (B) The board may deny a license pursuant to this subdivision only if the  
2 crime or act is substantially related to the qualifications, functions, or duties of the  
3 business or profession for which application is made.

4 7. Section 482 of the Code states:

5 Each board under the provisions of this code shall develop criteria to evaluate  
6 the rehabilitation of a person when:

7 (a) Considering the denial of a license by the board under Section 480; or

8 (b) Considering suspension or revocation of a license under Section 490.

9 Each board shall take into account all competent evidence of rehabilitation  
10 furnished by the applicant or licensee.

11 8. Section 493 of the Code states:

12 Notwithstanding any other provision of law, in a proceeding conducted by a  
13 board within the department pursuant to law to deny an application for a license or  
14 to suspend or revoke a license or otherwise take disciplinary action against a  
15 person who holds a license, upon the ground that the applicant or the licensee has  
16 been convicted of a crime substantially related to the qualifications, functions, and  
17 duties of the licensee in question, the record of conviction of the crime shall be  
18 conclusive evidence of the fact that the conviction occurred, but only of that fact,  
19 and the board may inquire into the circumstances surrounding the commission of  
20 the crime in order to fix the degree of discipline or to determine if the conviction is  
21 substantially related to the qualifications, functions, and duties of the licensee in  
22 question.

23 9. Section 2761 of the Code states:

24 The board may take disciplinary action against a certified or licensed nurse  
25 or deny an application for a certificate or license for any of the following:

26 (a) Unprofessional conduct, which includes, but is not limited to, the  
27 following:

28 .....

(f) Conviction of a felony or of any offense substantially related to the  
qualifications, functions, and duties of a registered nurse, in which event the record  
of the conviction shall be conclusive evidence thereof.

10. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning  
of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
licensed under this chapter to do any of the following:

.....

(b) Use any controlled substance as defined in Division 10 (commencing with

1 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
2 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
3 dangerous or injurious to himself or herself, any other person, or the public or to the  
4 extent that such use impairs his or her ability to conduct with safety to the public the  
5 practice authorized by his or her license.

6 (c) Be convicted of a criminal offense involving the prescription,  
7 consumption, or self-administration of any of the substances described in  
8 subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
9 record pertaining to, the substances described in subdivision (a) of this section, in  
10 which event the record of the conviction is conclusive evidence thereof.

11 11. Section 2765 of the Code states:

12 A plea or verdict of guilty or a conviction following a plea of nolo  
13 contendere made to a charge substantially related to the qualifications, functions  
14 and duties of a registered nurse is deemed to be a conviction within the meaning of  
15 this article. The board may order the license or certificate suspended or revoked, or  
16 may decline to issue a license or certificate, when the time for appeal has elapsed,  
17 or the judgment of conviction has been affirmed on appeal or when an order  
18 granting probation is made suspending the imposition of sentence, irrespective of a  
19 subsequent order under the provisions of Section 1203.4 of the Penal Code  
20 allowing such person to withdraw his or her plea of guilty and to enter a plea of  
21 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
22 information or indictment.

## 23 REGULATIONS

24 12. California Code of Regulations, title 16, section 1444, states:

25 A conviction or act shall be considered to be substantially related to the  
26 qualifications, functions or duties of a registered nurse if to a substantial degree it  
27 evidences the present or potential unfitness of a registered nurse to practice in a  
28 manner consistent with the public health, safety, or welfare. Such convictions or  
acts shall include but not be limited to the • following:

(a) Assaultive or abusive conduct including, but not limited to, those  
violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to  
Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the  
board, in evaluating the rehabilitation of the applicant and his/her present eligibility  
for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crimes under consideration as  
grounds for denial.

1 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
2 under consideration as grounds for denial which also could be considered as  
3 grounds for denial under Section 480 of the code.

4 (3) The time that has elapsed since commission of the act(s) or crime(s)  
5 referred to in subdivision (1) or (2).

6 (4) The extent to which the applicant has complied with any terms of parole,  
7 probation, restitution or any other sanctions lawfully imposed against the applicant.

8 (5) Evidence, if any, of rehabilitation submitted by the applicant.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 (May 8, 2002 Criminal Conviction for Driving Under the Influence and  
11 Driving with a Blood Alcohol Level of .08% or more, on February 24, 2002)

12 14. Respondent's application is subject to denial under sections 480(a)(1) and 2761(f) in  
13 that she was convicted of a crime substantially related to the qualifications, functions, and duties  
14 of a registered nurse. The circumstances are as follows:

15 a. On or about May 8, 2002, in a criminal proceeding entitled *People of the State*  
16 *of California v. Elizabeth Marie Swenson*, in Orange County Superior Court, case number  
17 CH02CM03402, Respondent was convicted on her plea of guilty to Count 1, violating Vehicle  
18 Code section 23152(a) (driving under the influence), a misdemeanor and Count 2, violating  
19 Vehicle Code section 23152(b) (driving with blood alcohol .08% or more), a misdemeanor.

20 b. On May 8, 2002, the imposition of sentencing was suspended as to Count 1 and  
21 Respondent was placed on informal probation for three years, ordered to complete a first offender  
22 alcohol program; her driver's license was restricted and she was ordered to pay fines.  
23 Respondent's sentence was stayed as to Count 2.

24 c. The facts that led to the conviction are that on February 24, 2002, Respondent  
25 left her mother's birthday party after consuming alcohol. As Respondent was driving home, she  
26 was pulled over by the police. Respondent was given a sobriety test, which she failed.

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1                                    **SECOND CAUSE FOR DENIAL OF APPLICATION**

2                    (July 21, 2006 Criminal Conviction for Disturbing the Peace on May 1, 2006)

3            15.    Respondent's application is subject to denial under sections 480(a)(1) and 2761(f) in  
4    that she was convicted of a crime substantially related to the qualifications, functions, and duties  
5    of a registered nurse. The circumstances are as follows:

6                    a.    On or about July 21, 2006, in a criminal proceeding entitled *People of the State*  
7    *of California v. Elizabeth Marie Serrano*, in Pasadena Superior Court, case number 6PS02113-01,  
8    Respondent was convicted on her plea of nolo contendere to violating Penal Code section 415(2)  
9    (disturbance by loud/unreasonable noise), a misdemeanor. As part of the plea agreement, the  
10   district attorney dismissed the original charge for violation of Penal Code section 243(a) (battery)  
11   against Respondent.

12                   b.    On July 21, 2006, the imposition of sentencing was suspended and Respondent  
13   was sentenced to spend 1 day in jail and was placed on informal probation for 18 months, ordered  
14   to attend counseling and present proof of attendance at AA meetings and to pay fines.

15                   c.    The facts that led to the conviction are that on May 1, 2006, at approximately  
16   1:30 a.m. outside of a restaurant, Respondent punched another women several times and knocked  
17   her to the ground. Respondent continued to fight with the woman on the ground until police  
18   came and broke up the fight. The other woman sustained a 1.5 inch laceration to the back of her  
19   head and required medical attention:

20                                    **THIRD CAUSE FOR DENIAL OF APPLICATION**

21                    (Act If Done By Licentiate – Dangerous Use of Alcohol)

22            16.    Respondent is subject to disciplinary action under Code section 480, subdivision  
23   (a)(3)(A) in that on or about February 24, 2002, Respondent used alcoholic beverages to an  
24   extent or in a manner that was dangerous and injurious to herself and the public when she  
25   operated a motor vehicle while under the influence of alcohol, as detailed in paragraph 14,  
26   above, which subjects a licensed registered nurse to discipline under Code section 2762,  
27   subdivision (b).

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 (Act If Done By Licentiate - Conviction Of Alcohol-Related Offense)

3 17. Respondent is subject to disciplinary action under Code section 480, subdivision  
4 (a)(3)(A) in that on or about February 24, 2002, Respondent was convicted of a criminal offense  
5 involving the consumption of alcohol as detailed in paragraph 14, above, which subjects a  
6 licensed registered nurse to discipline under Code sections 2762, subdivision (c), and 2761,  
7 subdivision (f).

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Denying the application of Elizabeth Marie Swenson, aka Elizabeth Marie Serrano  
12 for a Registered Nurse License; and  
13 2. Taking such other and further action as deemed necessary and proper.

14  
15 DATED: August 16, 2012

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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